

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-0107-3ACL*

FOR

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
MICHAEL MENGES

FOR

VIOLATION OF
CALIFORNIA WATER CODE SECTION 13267(b)

Siskiyou County

The California Regional Water Quality Control Board, North Coast Region (Regional Water Board) hereby finds that:

1. Michael Menges violated Section 13267(b) of the California Water Code (CWC) for which the Regional Water Board may impose civil liability under CWC Sections 13268(a) and 13323.
2. Mr. Menges owns the Macdoel General Store site, which is identified by the Siskiyou County Assessor as Parcel Numbers 35-024-060, 35-024-120 and 35-024-140 (hereinafter referred to as "Site") located in the Macdoel - Dorris hydrologic subarea (105.81). Mr. Menges owned and operated petroleum underground storage tanks located at the Site.
3. Four petroleum underground storage tanks were removed from the Site on December 28, 1994 under permit from the Siskiyou County Health Department. Five soil samples were collected by a Siskiyou County Health Department representative from beneath the former locations of the petroleum underground storage tanks. The county representative released custody of the five samples to Mr. Menges, who had one of the five samples analyzed for petroleum constituents. Laboratory analysis of the sample detected petroleum constituents. The four remaining soil samples were not analyzed as required under Section 2672(d) of Chapter 16, Title 23, California Code of Regulations.
4. Regional Water Board staff have issued letters to Mr. Menges on May 9, 1995, January 23, 1998, April 12, 1999, October 19, 1999 and January 19, 2000 requiring investigative work at the Site. Pursuant to CWC Section 13267(b), the Executive Officer of the Regional Water Board issued orders to Mr. Menges on June 21, 2000, August 10, 2000 and December 28, 2000 requiring submission of a completed site investigation report or a new workplan for the investigation of petroleum hydrocarbon discharges at the Site. Mr. Menges failed to submit the required report or workplan, thereby violating CWC Section 13267(b).
5. On May 4, 2001, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R1-2001-35 to Mr. Menges for his violation of CWC Section 13267(b). The Executive Officer proposed in the ACLC an Administrative Civil Liability in the amount of \$30,000, with \$15,000 of that amount suspended contingent upon submittal of the report or new workplan by July 15, 2000.
6. Mr. Menges disputed his liability under the ACLC, and a hearing on the matter was held on July 26, 2001. The hearing was originally scheduled for June 28, 2001, but Mr. Menges had requested that the hearing be held in Yreka in July.

7. CWC Section 13323 authorizes the Regional Water Board to issue Administrative Civil Liabilities. CWC Section 13268(a) provides for the imposition of civil liabilities against dischargers who fail to provide technical reports as required by subdivision (b) of CWC Section 13267. CWC Section 13268 provides that the Regional Water Board may assess civil penalties in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs. As set forth above, Mr. Menges has failed to submit a report required under CWC Section 13267(b). As of April 30, 2001, Mr. Menges has been in violation of Section 13267(b) of the CWC for eighty-nine (89) days. This yields a maximum potential civil liability of \$89,000.
8. In determining the amount of the liability, the Regional Water Board considered the following factors:
 - a. The Nature, Circumstances, Extent, and Gravity of the Violations:

Failure to submit reports of compliance with the terms of CWC Section 13267(b) is a serious violation. Lack of submitted data does not allow the Regional Water Board to adequately review Mr. Menges' operations to ensure protection of water quality.
 - b. Economic Savings:

The estimated economic savings from failure to conduct an initial site investigation for petroleum hydrocarbon contamination is estimated at \$15,000.
 - c. Degree of Culpability:

Mr. Menges failed to comply with the December 28, 2000 Order to submit a site investigation report or revised site investigation workplan.
 - d. Prior History of Violations:

Mr. Menges has failed to comply with written Regional Water Board requests dated May 9, 1995, March 14, 1997, January 23, 1998, April 12, 1999, October 19, 1999, January 19, 2000, June 21, 2000, and August 10, 2000 to conduct an investigation of the contamination at the site.
 - e. Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken:

Cleanup needs cannot be determined without assessment of the extent of contamination. Ongoing migration of pollutants released at the site may be occurring.
 - f. Degree of Toxicity:

The degree of toxicity of the discharge is unknown because an investigation to determine the extent of contamination has not been conducted.
 - g. Ability to Pay and Ability to Continue in Business:

Beyond the submitted letters, the Regional Water Board staff has no information regarding Mr. Menges' ability to pay. Mr. Menges should be prepared to address his ability to pay the maximum civil liability or any lesser amount.

h. Other Matters as Justice May Require:

Mr. Menges is operating at an unfair economic advantage to other similar firms who are in compliance with Regional Water Board Orders requiring investigation and cleanup at contaminated sites.

10. The issuance of this Order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

THEREFORE, IT IS HEREBY ORDERED that Mr. Menges pay an administrative civil liability in the amount of \$30,000. The \$30,000 Administrative Civil Liability for Mr. Menges is due within 30 days of adoption of this Order.

Certification

I, Craig R. Johnson, do hereby certify that the foregoing is a full, true, and correct copy of an Administrative Civil Liability Order adopted by the California Regional Water Quality Control Board, North Coast Region, on July 26, 2001.

Craig R. Johnson
Assistant Executive Officer

*Temporary order number, and final number will be assigned when adopted.